

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554

In the Matter of

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Annual Assessment of the Status of  
Competition in Markets for the  
Delivery of Video Programming

CS Docket No. 97-141

JUL 23 1997

**COMMENTS OF THE ALLIANCE FOR COMMUNITY MEDIA  
IN THE NOTICE OF INQUIRY**

The Alliance for Community Media ("Alliance") respectfully submits the following comments in response to the Notice of Inquiry in the above-captioned proceeding, released June 6, 1997 ("NOI"). The NOI asks various questions about the development of competition in the video programming delivery market. The Alliance respectfully urges the Commission to continue to protect the public interest in this proceeding by acknowledging the importance of the effective use of non-commercial channel capacity in cable, Open Video Systems ("OVS"), and Direct Broadcast Satellite ("DBS"). The Alliance believe that the statutory protections of this non-commercial channel capacity enhances competition.

**I. INTEREST OF THE ALLIANCE FOR COMMUNITY MEDIA**

The Alliance is a national membership organization comprised of more than thirteen hundred organizations and individuals in more than seven hundred communities. Members include access producers, access center managers and staff members, local cable advisory board members, city cable officials, cable company staff working in community programming, and others involved in public, educational and governmental ("PEG") access programming around the country. The Alliance assists in all aspects of community programming, from production and operations to regulatory oversight.

These centers produce and transmit local non-commercial, non-profit educational and public affairs television programming on local cable systems, pursuant to local franchise agreements authorized by Section 611 of

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the 1984 Cable Act.<sup>1</sup> As such, the Alliance represents the interests of religious, community, educational, charitable, and other non-commercial, non-profit institutions who utilize PEG access centers and facilities to speak to their memberships and their larger communities and participate in an ever-growing "electronic town hall."

The organization represents the interests of the hundreds of thousands of employees and volunteers who help produce educational, governmental and public access programming. Finally, it represents the concerns of everyone who believes that the tremendous resources of the Information Age should be made available to "at-risk" communities that otherwise would have insufficient means.

In many smaller and rural towns and villages, PEG access is the only means by which residents receive truly local programming. In suburban jurisdictions which may be served by one or more broadcast stations, PEG access programming allows cable subscribers to participate in events and activities of importance to the suburban community, from local school board meetings and town council elections to televised plays and concerts. PEG access also provides a forum for local religious and educational programming, community college courses, and high school football games. In large urban areas, PEG access provides a variety and diversity of communication which is unavailable on commercial local stations.

PEG access is provided on cable systems pursuant to a franchise agreement between a cable operator and a franchising authority (typically, a municipal or county government).<sup>2</sup> Cable operators may also be required to provide services, facilities and equipment to make such access possible.<sup>3</sup> Franchise authorities, which are entitled to collect franchise fees of up to five percent of gross revenue from cable operators,<sup>4</sup> will often provide a portion of these fees for PEG access. PEG access centers throughout the nation produce more than 20,000 hours of original programming per week; this is more than CBS, NBC, ABC, and PBS combined.<sup>5</sup>

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<sup>1</sup> Cable Communications Policy Act of 1984 ("1984 Act"), Sec. 611 (47 U.S.C. Sec. 531).

<sup>2</sup> Id.

<sup>3</sup> Id.

<sup>4</sup> 1984 Cable Act, Sec. 622 (47 U.S.C. Sec. 542)

<sup>5</sup> S.Rep. 103-367 (accompanying S. 1822), 103rd Cong., 2d. Sess. (1994) at 15.

## **II. PEG REQUIREMENTS AND DBS NON-COMMERCIAL RESERVATIONS SET-SIDES ARE EQUIVALENT; THE COMMISSION SHOULD PROMOTE THE USE OF BOTH**

Public, educational, and governmental requirements on cable systems<sup>6</sup> and open video systems ("OVS")<sup>7</sup> and the public interest set-asides on direct broadcast satellite ("DBS")<sup>8</sup> are functionally equivalent. All provide for a range of non-commercial educational and informational voices to have access to video transmission services. They also allow multichannel video programming distributors ("MVPDs") to fulfill their obligations to "serve the public interest, convenience and necessity"<sup>9</sup> by allocating channel capacity for educational, informational, public affairs, and community interest programming, rather than have the content of such programming determined by the Commission or other governmental body.<sup>10</sup> The Alliance believes that, subject to the Commission's pending rulemaking, PEG requirements and DBS set-asides can create a "level playing field" for cable, OVS, and DBS. Although the capacity reservations employ different administrative and regulatory mechanisms, Commission rulemaking can ensure that regulatory responsibilities are equivalent for each.<sup>11</sup> This will serve the industry's concern for competitive fairness as well as the public interest in receiving diverse points of view from diverse voices. PEG programming and DBS set-asides (if seriously implemented) will enhance the nation and our communities by providing pertinent non-commercial information and distance learning opportunities, and facilitating communication and cooperation amongst civic, religious, and educational groups and public policy makers.

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<sup>6</sup> 1984 Act, Sec. 611 (47 U.S.C. Sec. 531).

<sup>7</sup> Telecommunications Act of 1996, Pub.L. 104-104 ("1996 Act"), Sec. 302(a)(1996)(codified at 47 U.S.C. § 573(c)(1)(B)).

<sup>8</sup> 1934 Act Sec. 335(b)(1) (47 U.S.C. § 335(b)(1)).

<sup>9</sup> See 47 U.S.C. § 303.

<sup>10</sup> See, e.g., FCC Chairman Reed Hundt, "Getting Better All the Time," speech given June 9, 1997 at the Annenberg Public Policy Center, found at [www.fcc.gov/Speeches/Hundt/spreh731.html](http://www.fcc.gov/Speeches/Hundt/spreh731.html).

<sup>11</sup> See in general, *Comments of the Alliance for Community Media and the National Association of Telecommunications Officers and Advisors in the Notice of Proposed Rulemaking, in re Implementation of Section 25 of the Cable Television Consumer Protection and Competition Act of 1992, Direct Broadcast Satellite Public Service Obligations*, MM Docket No. 93-25 (April 28, 1997).

### **III. PUBLIC INTEREST PEG REQUIREMENTS AND NON-COMMERCIAL DBS CHANNELS PROMOTE COMPETITION.**

There has been no evidence to date produced by the cable industry that suggests that PEG access support and facilitation requirements in local franchises put them at a competitive disadvantage with regard to DBS or OVS. Only 16 percent of cable systems in the country have any PEG access of any kind.<sup>12</sup> Moreover, compared to other government interventions, the creation of and effective support for PEG channels can actually increase cable's competitiveness; from the early days of the cable industry, local non-commercial programming has been one of the strongest selling points. Indeed, one of the marketing weaknesses of DBS at present is its inability to provide subscribers with local programming.<sup>13</sup>

Cable continues to attract customers in part because of the unique programming found on community PEG channels.<sup>14</sup> In no other place in the vast universe of programming possibilities is a viewer more likely to see their friends, neighbors, civic leaders, and elected officials engaged in community-building. We are hopeful that the DBS industry will see the four-to-seven percent non-profit reservation required by Congress<sup>15</sup> and upheld last year by the D.C. Circuit Court of Appeals<sup>16</sup> as an opportunity to provide more of the non-profit, informational programming that American television viewers desire.<sup>17</sup> In the Alliance's view, cable/OVS can offer one distinctive type of non-commercial programming -- local educational and public affairs programming -- and DBS can offer another distinctive choice -- high-quality non-commercial educational and informational programming on national and/or regional issues.

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<sup>12</sup> Aufderheide, "Public, Educational and Governmental Access: A Survey," 42 Journal of Communications 52 (1992).

<sup>13</sup> See Barry Forbes, "Public Access: Good Business for Telecom Age," Multichannel News, July 7, 1997 p. 51.

<sup>14</sup> Statement of Ellen East, Director of Public Affairs, Cox Communications, Inc.: "Local programming overall (I would include PEG as well as local origination) gives us a competitive advantage." Telephone interview, July 18, 1997.

<sup>15</sup> 47 U.S.C. § 335(b).

<sup>16</sup> Time Warner Entertainment Co., L.P. v. FCC, 93 F.3d 957 (D.C.Cir. 1996); reh. den. 103 F.3d 723 (D.C. Cir. 1997).

<sup>17</sup> Kyle Pope, "Viewers Pan the Low-Brow, Hanker for How-To Advice," Wall Street Journal, June 27, 1997, A1 (results of opinion poll showing that 79 percent of Americans would like to see more history, documentaries and arts programming -- programming usually presented in non-commercial formats).

The Alliance submits that enthusiastic support of cable/OVS PEG and DBS non-commercial set-asides would be a key component of the marketing strategy of every MVPD. The creation of goodwill fostered by continuous commitment to community programming has become more important as the possibility of head-to-head competition increases in the video programming industry. We are hopeful that a serious commitment to quality non-commercial programming will attract customers based on positive visibility in the community. Potential subscribers would see a MVPD interested not only in serving shareholders, but also in genuinely enhancing the lives of its customers. PEG programming, technical assistance to governmental access, wiring of schools for the Internet, and similar activities would serve to make the MVPD a friend and neighbor.

#### **IV. INDUSTRY CONSOLIDATION HURTS COMPETITION, MUFFLES DISCOURSE.**

The Alliance is concerned that the recent waves of industry consolidation will have on a deleterious effect on competition for video programming delivery, as well as on viewpoint and content diversity in commercial mass media. When fewer players control the market, the natural tendency is toward rising prices, less diverse programming options, and slackened customer service standards. Time Warner's acquisition of Turner Broadcasting, TCI's buyouts and cluster agglomerations, Disney's takeover of Capital Cities/ABC, Microsoft's purchase of WebTV and minority participation in Comcast, The News Corporation's aborted merger with EchoStar, SBC's takeover of Pacific Telesis, the attempted merger of SBC and AT&T, the imminent merger of Bell Atlantic and Nynex all portend potentially harmful effects on the consumer.<sup>18</sup>

Because television has become the main source of information on which American voters draw at the ballot box, it is crucial for the future of the democracy to encourage a broad and inclusive range of viewpoints on MVPDs. The market for such publicly beneficial programming is not absent, although it is probably not as potentially lucrative as entertainment programming.<sup>19</sup>

Vertical concentration in the video industry raises serious antitrust and First Amendment concerns. Television is a nerve center of the body politic, vital to the preservation and extension of public participation in

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<sup>18</sup> "... [M]onthly rates for cable TV have risen more than twice the rate of the consumer price index in 1996." Mike Mills and Paul Farhi, "This is a Free Market? The Telecommunications Act So Far: Higher Prices, Few Benefits" Washington Post, January 19, 1997, p. H1.

<sup>19</sup> Pope, "Viewers Pan the Low Brow..." supra at A1.

civic discourse. Federal antitrust law was designed to protect ordinary people against "great aggregations..."<sup>20</sup> of market power. In the media market, anti-trust issues have constitutional ramifications as well. Consequently, the responsibility rests first with Congress and ultimately with the Commission to prevent the major media companies from asserting undue influence over political discourse based on the "whim or caprice, the political prejudices ... of a few self-appointed [executives]."<sup>21</sup> The Alliance also believes that the requirement of corporate media entities that their public affairs programming produce profit rather than contribute to meaningful public discourse has contributed to a decline in the overall quality of such discourse.<sup>22</sup> In the Alliance's view, the only meaningful alternative to the homogenization of programming on commercial MVPDs is to put training, tools and transmission of programming in the hands of widely dispersed citizen groups and individuals. PEG channels and the DBS non-commercial set-aside is one solution to the First Amendment issues affected by the overall decline of competition within the communications industry.

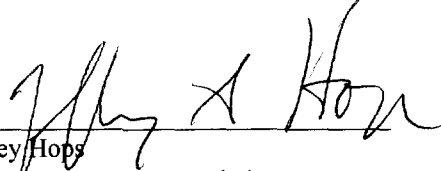
V. CONCLUSION

The Commission should continue work toward ensuring a competitive video marketplace. Moreover, the Commission should in its present and future rulemakings continue to recognize the important contributions of non-commercial access in an increasingly commercialized and concentrating industry.

Respectfully Submitted,

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<sup>20</sup> *United States v. AT&T*, 552 F.Supp. 131, 163-164 (D.D.C. 1982), quoting *United States v. Aluminum Co. of America*, 148 F.2d 416, 428 (2d Cir. 1945).

<sup>21</sup> *Id.*, 552 F.Supp. at 164, quoting *United States v. Columbia Steel Co.*, 334 U.S. 495, 536 (1948) (Douglas, J., dissenting).

<sup>22</sup> See, e.g., "How's Your Hearings?" *Washington Post*, July 21, 1997, p. C1. (network newscasts for the week of July 14 led with stories on Mike Tyson, JonBenet Ramsey, Gianni Versace, and Mars, with features on fly-fishing and Seinfeld, as opposed to the Senate's campaign finance hearings).